Supreme Court, U.S.
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In The

# SUPREME COURT OF THE UNITED STATES OF AMERICA

No. _____

James D. Schneller, Appellant
v.
Zoning Hearing Board of Radnor Township, Appellees

James D. Schneller, Appellant
v.
Radnor Township Board of Commissioners, Appellees

James D. Schneller, petitioner

## PETITION FOR WRIT OF CERTIORARI

On Petition of Appellant James D. Schneller for Writ of Certiorari to the Commonwealth Court of Pennsylvania at No.1757 CD 2008 and No. 1664 CD 2008

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## I. QUESTIONS PRESENTED

I. The constitutionality of Pennsylvania Law governing the level of aggrievment necessary to challenge zoning and land development proposals has been diminished by decisions limiting challenges to owners of adjacent property who allege financial harm. The Court is requested to find the recent trend of state court decisions to be unconstitutional.

II. Has the Supreme Court of Pennsylvania, and has the Commonwealth Court of Pennsylvania, violated due process requirements of justice, full and fair review, and access to Courts, and numerous specific decisions of the Court, the highest Pennsylvania courts and the circuit courts, in a volume that warrants reversal or other exercise of the Court's authority ?

TABLE OF CONTENTS


Table of Authorities 3a

I. QUESTIONS PRESENTED 1

II. PARTIES 4

III. JURISDICTION 4

IV. OPINIONS BELOW 5

V. STATEMENT OF THE CASE 6

VI. MOTION FOR JOINT CONSIDERATION 14

VII. REASONS FOR GRANTING THE WRIT

I. . . 17

II. . . . . 31

VIII. CONCLUSION 43

IX. TEXTS OF PERTINENT STATUTES 44

53 P.S. § 10910.2, 53 P.S. § 10913.3

TABLE OF CONTENTS (Continued)

APPENDIX

Schneller v. Radnor Zoning Hearing Board 1757 CD 2008

Exhibit A - Order entered August 9, 2010 by the Supreme Court of Pennsylvania 46

Exhibit B - Order entered August 7, 2009 by the Penna. Commonwealth Court denying rehearing. 47

Exhibit C - Order entered June 1, 2009, by the Commonwealth Court of Pennsylvania 48

Exhibit D - Order entered October 6, 2008, by the Delaware County PA Court of Common Pleas 63

Schneller v. Radnor Board of Commissioners 1654 CD 2008

Exhibit E - Order entered August 9, 2010 by the Supreme Court of Pennsylvania 68

Exhibit F - Order entered August 7, 2009 by the Penna. Commonwealth Court denying rehearing. 69

Exhibit G - Order entered June 1, 2009, by the Commonwealth Court of Pennsylvania 70

Exhibit H - Order entered October 14, 2008, by the Delaware County PA Court of Common Pleas 84

TABLE OF AUTHORITIES

CASES

Acorn Development Corp. v. Zoning Hearing Bd. of Upper Merion Tp., 105 Pa. Commw. 138, 523 A.2d 436 (1987) 24 , 29

Allegheny v Venneri, 5 Pa.Cmwlth. 105, 289 A.2d 523 (1972) 38

Appeal of Hoover, 608 A.2d 607 (Pa.Cmwlth.,1992) 20

Berry v. Vantries, 12 Serg. & Rawle 89 (Pa.,1824) 39

Budco Theatres, Inc. v. Zoning Hearing Bd. of Springettsbury Tp., 632 A.2d 1072 (Pa.Cmwlth.,1993) 28

Building Industry Ass'n of Lancaster County v. Manheim Tp., 710 A.2d 141 (Pa.Cmwlth.,1998) 20 , 25

Cherry Valley Associates v. Stroud Tp. Bd. of Sup'rs, 554 A.2d 149 (Pa.Cmwlth.,1989) 9

City of Philadelphia v. Clare, 17 Phila. 59 (Pa.Com.Pl.,1885) 41

City of Philadelphia v. Phila. Bd. of License and Inspection Review, 669 A.2d 460 (Pa.Cmwlth.,1995) 38

Com., Office of Atty. Gen. ex rel. Corbett v. Locust Tp., 915 A.2d 738 (Pa.Cmwlth.,2007) 28 , 29

Dainese v. Cooke, 1 Otto 580 (U.S.D.C.,1875) 15

Dennis v. Southeastern Pennsylvania Transp. Authority, 833 A.2d 348, (Cmwlth.2003) 39

Feldman v. Lafayette Green Condo. Assoc., 806 A.2d 497, 502 fn.3 (Pa. Cmwlth.2002) 38

Friends of Atglen-Susquehanna Trail, Inc. v. Pennsylvania Public Utility Com'n, 717 A.2d 581 25

Gilbert v. Homar, 117 S.Ct. 1807(U.S.Pa.,1997) 30

Harrisburg Fore Associates v. Board of Sup'rs of Lower Paxton Tp., 97 Dauph. 72 (1974), reversed 344 A.2d 277, 21 Pa.Cmwlth. 137 40

In re Leopardi, 496 A.2d 867, 90 Pa.Cmwlth. 616, (1985) appeal granted 509 A.2d 1262, 510 Pa. 502, reversed in part 532 A.2d 311, 516 Pa. 115 42

In Re Rouse & Associates, 636 A.2d 231 (Pa.Cmwlth. 1993) 18 , 21 , 22 , 23 , 25

Ken R. on Behalf of C.R. v. Arthur Z., 682 A.2d 1267 (Pa.,1996) 24

Laudenberger v. Port Authority of Allegheny County, 436 A.2d 147 (Pa.,1981) 15

Leoni v. Whitpain Twp., 709 A.2d 999 (Pa.Cmwlth 1998) 20

Merlino v. Delaware County, 711 A.2d 1100 (Pa.Cmwlth.,1998) 19

Middleton v. Middleton, 812 A.2d 1241, 2002 PA Super 371 34

Nermberg v. Pittsburgh, 620 A.2d 692 (Pa.Cwlth. 1993) 40

Orie v. Zoning Hearing Bd. of Borough of Beaver, 767 A.2d 623 (Pa.Cmwlth.App.,2001) 20 , 21

Royal-Globe Ins. Companies v. Hauck Mfg. Co., 335 A.2d 460, 233 Pa.Super. 248 (Super.1975.) 39

Spahn v. Zoning Bd. of Adjustment, 922 A.2d 24, (Pa. Cwlth. 2007) pet. allowance appeal granted 598 Pa. 108 (2008) 21 , 22

Tri-Township Citizens Association v. Strausbaugh, 14 Adams L.J. 197 (1973) 20

Vare v. Walton, 21 Pa.Dist. 77 (Pa.Com.Pl.,1911) 33

Viechec v. Zoning Hearing Board Of Hazle Township, 676 A.2d 1317 (Pa. Cmwlth.,1996) 20

STATUTES

U.S.Constitution 18 , 26

U.S.C.A.Const.V 29

U.S.C.A.Const.XIV 29

Pa.Constitution 19 , 26

Pa.Const.Art. I s1 29

Pa.Const.Art. I s11 29

Pa.Const.Art. I s27 27

Pa.Const.Art.V s10 29

53 P.S. §10101

53 P.S. §10910.2 44

53 P.S. §10913.3 44

53 P.S. §10916.1 28

Pa.R.C.P. 240 36

Pa.R.C.P. 1023.1 11

Radnor Township § 280-157(B) 25

To the Justices of the Supreme Court:

Petitioner James D. Schneller, representing himself, requests a writ of certiorari to the Commonwealth Court of Pennsylvania, and relief in the alternative, stating as follows :

## II. PARTIES

All parties appear in the caption of the case on the cover page.

## III. JURISDICTION

The jurisdiction of the Court is invoked under 28 U.S.C. § 1257.

This petition is taken from decisions of the Supreme Court of Pennsylvania declining review of affirming Orders in two related cases in the intermediate court of review. The date on which the Supreme Court of Pennsylvania decided these cases was August 9, 2010.

Petitioner raised his objections and arguments in regard to the issues presented in this petition, in the proceedings below. Petitioner raised all issues including the within questions, in the pleadings which he presented, making certain to preserve any issues, especially where there was lack of hearing or failure of the respondents to address issues. Each issue in these proceedings was responded to by respondents or was afforded an opportunity for response by respondents. Respondents through prompt service were continually afforded an opportunity for response by respondents.

Petitioner raised all issues including the within questions, in the pleadings which he presented to the trial Court, making certain to preserve any issues, due to lack of hearing and failure of the defendants to appear, in the motion for relief from the order

## IV. OPINIONS BELOW

The Commonwealth Court of Pennsylvania decided these cases in unreported memoranda and orders dated June 1, 2009. (Exhibits C and G)

The Supreme Court of Pennsylvania did not enter any opinion or memorandum order in either case.

The Delaware County Court of Common Pleas issued opinions in each case, on October 6, 2008 and October 14, 2008, respectively. (Exhibits D and H)

## V. STATEMENT OF THE CASE

Appellant, the petitioner, filed a notice of appeal from a decision of the Radnor Township Zoning Hearing Board, and a forma pauperis application in the Delaware County Court of Common Pleas at No. 07-18257, Schneller v. Radnor Township Zoning Hearing Board . The forma pauperis application was granted. Norcini Builders Inc. ("developer") claimed automatic intervenor status over objections

Claiming as resident and neighbor, appellant appealed for reasons including voluminous reversible error in the designation by the Township of a grassy alley behind a block of large, historical, residences ( the "path") as a street, under Chapter 280 of the Radnor Municipal Code, entitled Zoning. This devisement had been sought by the developer, with an alternate request for special exception, and threat of building row homes, for purposes of redevelopment of two and one-fourth

properties into 5 mini-lot properties, to the horror of the entire township, which had just enacted a historical ordinance, and which values the spacious appearance, and the value it creates, in the town of Wayne, Pennsylvania, and in the part of Wayne in which the proposal is situated.

This decision, despite it's statement by the letter being limited to an unspecific conclusion that Owens Lane is a street, apparently is considered by Radnor Township sufficient to enable the developer to pursue their obdurate effort to draw the 5 mini-lots, based on a false "frontage" of two of the lots on the path, but with all 5 lots in reality fronting the street constituting the front side of the lots in question, and despite numerous additional conflicts with the ordinance.

The decision was claimed by appellant to stand as an interpretation of a basic definition set forth in the code's zoning chapter, which stands to severely affect every subsequent decision in this realm. Also claimed is the fact that because a pathway, formerly unnamed, is now apparently named a street, a change to the zoning map results, thus causing the matter to fall under additional sections of the law. Thus appellant claimed the matter to cause need for a determination of validity of the code and map. The circumstances in conflict with legality of this decision did not stop here, and are numerous and

intertwined. They are stated, in additional part, in the discussions throughout this petition. One fatal invalidity is the fact that the map already has an Owens Lane, that is a narrow, one lane, double elbow, mainly used by those who live on it. The path in question is an extension of one of the elbows. This extension, cutting across the rear of five properties, is a never-paved path 10 feet at most in width. This path is now declared a third leg of Owens Lane, and this declaring of a street with three (3) legs, is not only an invalid change to the map, but is fiction in that it was clearly never a street nor alley but rather a longstanding private driveway little used. The decision stated that land title issues were inherent, but chose not to resolve them.

The Zoning Hearing Board of Radnor Township filed a petition to join in intervenor's petition to quash, challenging appellant's standing, including level of participation and level of aggrievment. Appellant raised substantial defenses, claiming failure to meet the threshold for quashal; satisfaction of elements necessary for standing: aggrievment and participation, despite his late entry in the process, including that no other citizen was standing against what is alleged to be patent voluminous error and government partiality. Appellant claimed lack of formal notice of the decision, to the developer, as further proof of appellant's active participation, because the decision to not send formal

notice was certain evidence that the post-hearing objections and reconsideration request, which were the first participation by appellant in the matter, had resulted in reconsideration, because they resulted in a decision to not formally serve notice of the decision, thus causing a level of reconsideration satisfactory for a finding of participation by appellant, under the circumstances (those circumstances being evident in the papers filed by appellant, and his subsequent appearances at other Township meetings on the matter, which were not stayed).

Appellant filed a petition for stay, which was denied. The trial Court, after two hearings, granted the petition to quash, denied appellant's motion to strike notice of intervention, and denied a motion that had been filed by appellant to join appeal from denial by the Township of alleviation of the $ 1000.00 fee for a challenge to validity and curative amendment.

Appellant filed a motion for reconsideration of the Court's orders, which was denied. Appeal was timely filed at Pennsylvania Commonwealth Court No. 1757 CD 2008. Appellant had been denied his requests to bring the full municipal record, rather than the abbreviated record that was transmitted, into Court, and was denied his praecipe to retain the record in the trial Court. see Cherry Valley Associates v. Stroud Tp. Bd. of Sup'rs, 554 A.2d 149 (Pa.Cmwlth.,1989) so that appellant might

better inspect the record before it was transmitted to Harrisburg, 150 miles away. Appellant objected to the failure of the clerk to number the pleadings nor to write the appropriate numbers for each pleading on the docket, which is their typical practice.

Appellant on appeal sought review of denial of his case, arguing with relevant authorities his sufficient standing, sufficient aggrievment, timely and substantial participation, and timely appeal to the trial Court. Appellant additionally sought standing because the decision of the municipality was flagrantly arbitrary, capricious, and unreasonable, and clearly in violation of positive law, or a manifest and flagrant abuse of discretion, and no other resident had come forth with any challenge to this set of circumstances, amid circumstances of unreasonable acts resembling threats.

Also claimed to be abuse of discretion was denial of appellant's motion to join a claim of invalidity of the municipal statute, pursuant to a timely filed motion to join in the appeal in the Common Pleas, and failure to resolve questions of the court's jurisdiction and the order's finality. A finding of unconstitutionality of the prevalent law regarding aggrievment was requested.

Appellant during appeal filed a motion for stay to the Commonwealth Court because a prominent and growing issue of improper and unlawful activities by Radnor Township officials, leading to departure of twelve

or more of them including the Solicitor and Township Manager, came under investigation by the Delaware County District Attorney, the Pennsylvania Attorney General, and the Federal Bureau of Investigation. Appellant's motion to reply to new matter and verified statement passed the Order denying the motion for stay in the mail, and that motion was then denied as moot. Deducing that affirmation was likely, appellant did not file a petition for review of that denial of stay. The Commonwealth Court entered the affirming decision.

Appellant filed a motion for reconsideration of denial of stay or injunction that was decided by a single judge, raising newer revelations in the management scandal, and unwarranted permissions for street blockages. Appellant at the same time filed a motion for sanction pursuant to Pa.R.C.P. 1023.1, which the prothonotary illegally turned away. In it appellant validly claims that a new claim presented by appellee and intervenor in their response briefs was false and unpreserved. Said new claim propounded that appellee provided written copy of the resolution approving the land development to the landowner at the meeting at which the vote took place. This claim is a near impossibility, and counter to Township policy and the municipal code, and was never claimed in the common pleas despite two hearings and abundant submission of exhibits. Appellant requested in the motion for reconsideration, remand for inclusion

of these facts in light of other fact also put forth and the falseness evident in responses.

Appellant also requested that the decision be converted to a published opinion, warranted most of all because the issues of level of aggrievment and constitutionality of present policy are likely of review, are of public importance, and are capable of repetition if not decided. These were denied.

Appellant therefore filed a petition for allowance of appeal with the Supreme Court of Pennsylvania, and a motion for stay of township activity in the matter. A motion for sanction for false pleading was refused by the clerk. Responses were filed. The Supreme Court of Pennsylvania denied the petition for allowance of appeal, No. 673 MAL 2009, and the motion for stay, and denied appellee's requests for attorney's fees.

Concurrent Case No. 672 MAL 2009 Schneller v. Louella

The above stated chronology pertains also to an appeal litigated by appellant in the same Courts, regarding a different parcel of land, and, especially for purposes of this petition, is greatly similar in factual background regarding standing, level of aggrievment, and treatment by the appellate Courts. That case is Delaware County

Court of Common Pleas No. 07-18540, Schneller v. Radnor Township Board of Commissioners, Commonwealth Court No. 1664 CD 2008, ("Louella case") regarding an unrelated land use decision. Rather than a zoning board determination, the case concerns a final approval of land development by the governing body, with underlying claims of spot zoning and egregious failure of public duty, for a nine unit condominium pertinently situated in a recently passed town center overlay district. Land developer Louella Holding Company LP filed a late notice of intervention over multiple objections.

The two appeals from these two cases share the same arguments regarding standing, participation, and acts of the government unit. Appellant claims in his request for vacating or reversal a level of egregiousness that is equally high in either case.

In the Louella case, the fulcrum issue actually bearing on decisions is the county court's ministerial wrongs attempting to cancel the case, and the courts' ultimate re-casting of the case in the opinions (Exhibit H), including the Commonwealth Court's outlandish sua sponte reasons for affirmation (Exhibit G), which are mainly issues relying on the Zoning Board case. There was no hearing in this case and the record was never permitted a full development. In brief, appellant's

payment of the fee subsequent to denial of forma pauperis was never docketed, and, despite his proof of the cancelled money order submitted, the Commonwealth Court failed to find for appellant's payment of the fee, and instead applied sua sponte the same erroneous law as inflicted in the concurrent Zoning Board case. (Exhibit C)

## VI. MOTION FOR JOINT CONSIDERATIOIN

The questions presented are requested to be considered regarding the two cases described in the Statement of the Case. Both cases involve land development decisions, by the same township, with both of the appeals decided on the same day in the intermediate state appeals court, relying on the same law, and on the same day in the Supreme Court of Pennsylvania. The constitutional circumstances were drawn into the one appellate decision in ways identical to the other appellate decision, sua sponte, and the brief in the former claimed substantial constitutional shortcomings of it's own. Meaning and purpose of equal protection clause of Federal Constitution and prohibition against special laws in State Constitution were sufficiently similar to warrant like treatment, and contentions concerning the two constitutional provisions could be

reviewed simultaneously. Laudenberger v. Port Authority of Allegheny County, 436 A.2d 147 (Pa.,1981)

A suit by a landowner to enjoin building inspector and board of public works from attempting to compel him to remove buildings under construction and a suit by the board of public works against the owner of the land and contractor to prevent them from proceeding with the work on the same buildings would be consolidated in the Supreme Court, as they should have been consolidated and heard together in the Court below. Dainese v. Cooke, 1 Otto 580 (U.S.D.C.,1875)

Appellant also requests review of the two cases, by way of a single petition for writ of certiorari, a) because of his poverty, and b) equally because of the identity between cases, and the resulting economy of time and space that will result if the Court recognizes both cases.

Appellant therefore respectfully requests that the Court grant consideration by way of this petition, of the cases most recently found at Pennsylvania Supreme Court No. 672 MAL 2009 and No. 673 MAL 2009.

Appellant respectfully requests, in the alternative, that the fee be ordered paid for both cases, and that this petition be found sufficient in order for consideration of appellant's prayer for writ of certiorari to the

Pennsylvania Supreme Court at No. 672 MAL 2009, No. 673 MAL 2009, or both.

## VII. REASONS FOR GRANTING THE WRIT

Appellant refrains in this petition from pointing out the lesser but numerous prejudicial and partial acts and error, which, especially taken cumulatively, clearly affected this case and appeal.

Question No. 1 is of public importance, and capable of repetition, and the underlying issue has been decided in a way not in accord with applicable decisions of the Court nor the Pennsylvania Courts. This in turn is an issue present in arguments supporting the reversals requested in Question 2, even regarding the fact that egregious and patent error is always an issue of public concern.

Many or all of these legal issues are of such substantial public importance as to require prompt and definitive resolution by this Court.

Appellant additionally files this petition because the Pennsylvania Courts have departed to such a degree from accepted judicial practices and fairness, and so abused their discretion, as to call for the exercise of this Court's supervisory authority.

Appellant regrets if the Court is concerned of being again requested to review claims of abuse of discretion and overt errors of law in a petition for allowance of appeal by appellant. Appellant, however, is at the same time, convinced that this petition shows error rising to a level and volume that warrants review of what are strong and current legal issues, as well as reversal or remand.

I. **The constitutionality of Pennsylvania law governing the level of aggrievment necessary to challenge zoning and land development proposals has been diminished by decisions limiting challenges to owners of adjacent property who allege financial harm. The Court is requested to find the recent trend of state court decisions to be unconstitutional.**

The trial Court and the affirming Courts have decided a question of substance in a relevant and revealing fact situation. The question of standing in zoning and land use appeals has been more uniformly decided since the passing of the Pennsylvania Municipalities Planning Code, 53 P.S. Chapter 30 §10101

et seq.[1], but a rigorous application of the law as currently delineated imposes deprivals of constitutional rights and different treatment of different citizens, on petitioner and on Pennsylvania citizens and citizen groups aggrieved by decisions or proposals before local bodies. Decisions have now been published that negate standing to residents of municipalities simply because they didn't own adjoining property or suffer outright, immediate pecuniary harm.

The level of aggrievment to appellant, and the concise discussion of it in the pleadings by appellant, and the preclusion of his claim under these circumstances, strongly supports a finding that the limits on level of aggrievment based on the Municipality Planning Code, as accentuated by the decisions against appellant, and in recent decisions by the Pennsylvania appeals courts, including In Re Rouse & Associates, 636 A.2d 231 (Pa.Cmwlth. 1993), are unconstitutional, at the state level, and at the federal level, due to the effective depriving of rights to access to courts, rights to defend liberty, health, comfort, and property, right to due process, and right to equal protection, the latter stated including due to the clear limiting in recent decisions to adjacent property owners, which in it's arbitrariness precludes the rights of numerous classes of citizens such

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[1] Enacted 1968, July 31, P.L. 805, art. I, § 101. Reenacted 1988, Dec. 21

as next-neighbors, pedestrians, drivers, and sub classes, including, in this case, the historical-minded,travel-limited, and business owners. U.S.C.A., Pa. Const.

The issue presented in this question is whether present authorities which have recently and increasingly tightened the scope of definition of aggrieved citizen are unconstitutional in their effective preclusion of appeal by citizens in conflict with the level of aggrievment that is intended by the United States Constitution as echoed in the Pennsylvania Constitution. As stated, despite the irrelevance of the specific circumstances in the cited authorities, appellants and many citizens suffer ending of cases due to general statements of policy which emanate from recent authorities, this fomenting a much more rigid threshold for aggrieved status, than existed 5 and 10 years ago.

The Commonwealth Court of Pennsylvania, in the instant decisions, as had argued the various appellees, narrows the scope of aggrievment to a new standard, stating that a *financial* interest is an element necessary for standing. Previously, pecuniary interest has been held to not be either mandatory nor a guarantee of standing. E.g. Merlino v. Delaware County, 711 A.2d 1100 (Pa.Cmwlth.,1998) (Party's interest in litigation does not have to be a financial one, for party to have standing.) "Pecuniary interest" has not previously been narrowed to solely a "financial" aspect. Adverse

pecuniary effect has not been required to establish standing to contest granting of zoning permit. Viechec v. Zoning Hearing Board Of Hazle Township, 676 A.2d 1317 (Pa. Cmwlth.,1996) ; Appeal of Hoover, 608 A.2d 607 (Pa.Cmwlth.,1992), nor has ownership, nor residence in the same municipality. Tri-Township Citizens Association v. Strausbaugh, 14 Adams L.J. 197 (1973).

Harm is "substantial," for purposes of standing, if its effect on the party challenging the action is greater that its effect on the public at large. Building Industry Ass'n of Lancaster County v. Manheim Tp., 710 A.2d 141. (Pa.Cmwlth.,1998) The various decisions cited in the appeal, most of them by the Commonwealth Court, are in reality, uniform in their careful application of any strictness to the situations at hand, but the general milieu is unmistakably one of increasing restriction on what constitutes aggrieved status. In the instant decision the affirming Court as did the Delaware County Court, applies authorities in a strict manner. A general restrictiveness however is shown evident in the assorted decisions complained of here. As the best example, in the case appealed at 1757 CD 2008, Orie v. Zoning Hearing Bd. of Borough of Beaver, 767 A.2d 623 (Pa.Cmwlth.App.,2001) and Leoni v. Whitpain Twp., 709 A.2d 999 (Pa.Cmwlth 1998) are cited by the Zoning Board as authority for lack of standing because the litigants, as here, did not attend the hearing. However,

inter alia, the Leoni appellant found to not have standing, was well aware of the zoning hearing and chose to not attend. [2]

In the opinions the Commonwealth Court discusses Spahn v. Zoning Bd. of Adjustment, 922 A.2d 24, (Pa. Cwlth. 2007) pet. allowance appeal granted 598 Pa. 108 (2008), (cited by petitioner for the opposite reason) as authority for lack of standing where the interest of Mr. Spahn was one common to all citizens. A reading of Spahn shows that that appellant admitted to his community-centered concern, and his pleadings apparently reflected this sole intent of furthering a community concern. [3] Likewise the case In re: Rouse and Associates, cited by the Commonwealth Court to stand for the proposition that abstract or potential injury, especially where common to all citizens, cannot support aggrievment, would be argued by petitioner to

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[2] This is not the case with appellant. And in Orie " landowners had standing to appeal zoning hearing board decision . . although they did not speak at hearing, since owners were aggrieved, and they had sent letter to zoning board prior to hearing detailing their objections. " Thus written objections sufficed.

[3] Petitioner on the other hand pled concisely that he is personally, directly, and overtly injured, that he belongs to classes and subclasses of citizens whose aggrievment is not shared by the populace at large, and his being the only citizen coming forth .

be invalidly strict and treating of different citizens in different ways. The appellants in In re: Rouse and Associates, especially if, under Spahn, they had specifically pled that their property bordered on the stream in question, and they had claimed that they fished, swam, or hunted near said stream, would nevertheless have suffered even greater deprivals of rights. In typical cases, the physical results like traffic hazards, invalidity, and spot zoning or special legislation nature of ordinances, among many additional ills, are far above speculative, and cause valid harms to citizens due to a combination of proximity, means and frequency of travel on the pertinent street, error in decisions, as supportive of a lower threshold for standing because of community needs of valid and good faith governing and preservation of land values and quality of life. [4] These are precluded under the stated tightening of definition.

Designating a citizen's interest as abstract or tenuous because they do not own property that would be affected to a greater degree than others, by a permitted use or variance, or cannot claim an interest outside of the common public interest, falls alarmingly short of the right to defend, due process, and access to justice, clauses of our Constitutions.

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[4] Appellant also alleges apathy, intimidation of the populace, and sheer volume of error in the decisions.

Moreso, this definition gives all Courts, respectfully, too wide a range of claims to aggrievment that could be dismissed as tenuous or abstract where they actually assert substantial personal harm. The pertinent citizens in Rouse, at the least, deserved an evidentiary hearing to further testify how some of them might fish the creek every Spring, or some of whose children might wade in the stream on warm afternoons seeking fish or frogs, or some who live nearer the creek's testimony that the foul smell would affect the selling value of some homes. An expert's deeper testimony as to effects on the quality of recreation, and quality of life (and property value) would prove harm when creek water quality was caused to drop due to tract housing. No citizen nor Court can conclude that these are ills that are abstract or potential harms, or common to the citizenry as a whole, simply because property value hasn't been quantified, and all the more because aggrieving of liberty, health, comfort are not as readily quantifiable - this is an arbitrary and outlandishly unbalanced application of Constitutional rights.

Unconstitutional deprivals (and abuse of discretion) by the Courts below are further evident in the designating of injuries claimed to be imminent, as *potential* injury, as if that was a vagueness. The guaranteed effects of safety hazard, nuisance, and eyesore, clearly alleged in both cases starting at the municipal level, are neither abstract nor equally distressing to all citizens.

Appellant is a member of the Radnor Historical Society. Appellant's district's civic association is the long time and revered South Wayne Public Safety Association. The number of unfounded decisions by appellees of late is only one of many reasons alleged to explain why these groups have not litigated in these recent appeals. A prominent one of these being the decision in Acorn Development Corp. v. Zoning Hearing Bd. of Upper Merion Tp., 105 Pa. Commw. 138, 523 A.2d 436 (1987) that community groups do not enjoy standing in land use appeals. Acorn would be argued invalid in the brief.

The Commonwealth Court has decided the standing issue mainly on the above basis of *substantial* aggrievment, and so is deciding all the more in a deprival of access to defend life, liberty, and property because plaintiff has met the elements of directness and immediateness. The general theories in published decisions remain broader than the actual fact bases increasingly present. "Immediate interest" in subject matter of litigation, as required for standing, involves nature of causal connection between the action complained of and the injury to party challenging it and is shown where interest the party seeks to protect is within the zone of interests sought to be protected by the statute or constitutional guarantee in question. Ken R. on Behalf of C.R. v. Arthur Z., 682 A.2d 1267 (Pa.,1996). Standing requirement that an interest be "direct" means

simply that the person claiming to be aggrieved by agency adjudication must show causation of the harm by the matter of which he or she complains. Friends of Atglen-Susquehanna Trail, Inc. v. Pennsylvania Public Utility Com'n, 717 A.2d 581 (Pa.Cmwlth.App.,1998) Harm is "immediate," for purposes of standing, if there is a close nexus between the harm or injury and the challenged action. 2 Pa.C.S.A. § 702. Building Industry Ass'n of Lancaster County v. Manheim Tp., 710 A.2d 141 (Pa.Cmwlth.,1998)

The background, then, evidences the more just and intended milieu, while the recently published exhibit the unjust and unintended. Even the Radnor Municipal Code supports a wider scope for defining aggrievment, stating in § 280-157(B) of the Radnor Zoning Code, that any "owner *or tenant* of real property who shows that his property *or person* will be affected"(emphasis added) may institute appropriate action to correct or abate land development harms. Appellant is a tenant.

In essence, if aggrievment enjoys the present day definition then all of the many interests and rights, other than defense of property, defined by direct proximity, and outright harms, defined as pecuniary, are being prevented of any defense in the land use appeal arena in our State. The level of aggrievment, and the concise statement of it in the pleadings by appellant, causes appellant to respectfully include here a claim that a fatal

preclusion of a claim under these circumstances strongly supports a finding that the limits on level of aggrievment stated in the Municipality Planning Code, as decided in this appeal, and in recent decisions by the Court including In Re Rouse et al, is unconstitutional, at the State level, and at the Federal level, due to the effective depriving of rights to access to courts, rights to defend liberty, health, comfort, and property, right to due process, and right to equal protection, including due to the clear preference and bias given to adjacent property owners, which in it's arbitrariness precludes the rights of numerous classes of citizens such as pedestrians, drivers, and sub classes and individuals within them including neighbors, drivers, the historical-minded, the travel-limited, and all citizens with the innumerable traits and circumstances clearly perceivable as not common to the populace as a whole. U.S.C.A., Pa. Const.

Appellant believes that the Court would adversely find additional support for legal standing of appellants to appeal, including from appellant's claim of broadening of the scope of "aggrieved parties" due to recent enactment of Historical District statutes, where the matter of historic preservation is a matter of great fervor in a subclass of Radnor Township citizens, of which appellant is one, but not to the community as a whole, and moreso where appellant has grazed a claim, and would show on remand, that the appellee's historical statute, despite the

substantial number of citizens who participate and encourage it, and the obvious relevance of Wayne, Pennsylvania as historic[5], is a weak statute, so that the coming forth of a citizen is all the more supportive of standing.

Unconstitutionality is further claimed, in that the policy thwarts the intent for preservation of the natural, scenic, historic and esthetic values of the environment in violation of the PA Const. Art. 1, § 27. Appellant claims that the bias of the law in favor of landowner/developer partnerships is out of synch with the times, and with the variation from Township to Township of the level of development in progress, level of development required, level of development that is sustainable, and level of development that is to be considered bearable by the community.[6] This is the situation too with challenges to validity of ordinances, a due process right. For a party to be aggrieved, as would allow party to challenge

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[5] Wayne is the first planned suburb and first railroad stop suburb in America; much of the initial stages of it were built over 100 years ago.

[6] Appellant cites several sections of the Radnor Municipal Code as in express need of review due to invalidity and unconstitutionality, due to their being arbitrary, unreasonable, established for the advantage of applicants such as the developer, spot zoning, and not assisting in any way to the public health, safety, welfare, nor such comforts of the appellant.

validity of land use ordinance on substantive grounds under Municipalities Planning Code (MPC), the party's interest must be distinguishable from the interest shared by all citizens. 53 P.S. § 10916.1. Com., Office of Atty. Gen. ex rel. Corbett v. Locust Tp., 915 A.2d 738 (Pa.Cmwlth.,2007)

The current law precludes one or a number of concerned citizens, including citizens whose rights to defend property, to liberty, to free speech, and to access to justice, may be substantially affected, from access to the Courts, and from access to review where a review procedure is in place and thus needful of all constitutional deference to citizens. As is the case in decisions regarding aggrievment required for status in Zoning Board proceedings, aggrievment status for the purposes of challenges to validity is unconstitutionally far more readily available to those parties seeking to create congestion. A landowner is not [even] required to submit proposed plan of development before township zoning hearing board could consider landowner's substantive challenge to zoning ordinance. 53 P.S. § 10916.1(a)(1). Budco Theatres, Inc. v. Zoning Hearing Bd. of Springettsbury Tp., 632 A.2d 1072 (Pa.Cmwlth.,1993) This obstruction to right to defend rights is apparently enforced by decisions in regard to appeals to this Court as well. "Committee's interest in potentially pervasive effect on township residents from

rezoning was not legally enforceable interest, but rather, was interest shared by community. Acorn

Appellant would argue the question of whether the decision in Com., Office of Atty. Gen. and it's predecessors and progeny, and in Acorn , are unconstitutional in their more blatant creation of unequal treatment between different citizens and between real estate developers, and other parties seeking to alter the levels of comfort, property value, liberty, safety, environmental health, and related rights guaranteed or guaranteed equal treatment to all citizens by the Constitutions.

Appellant has stated that classes and sub-classes of citizens exist that directly affront the doctrines of 'populace as a whole,' 'potential harm,' and abstractness. Special classes exist for purposes of this legal question, in the zoning realm, due to it's unique and all-encompassing scope of daily health and comfort and basic principles of sacredness of community, house and home. Pa.Const.Art.I s1, Pa.Const.Art.I s11, Pa.Const.Art.V s10, U.S.C.A.Const.V, U.S.C.A.Const.XIV. Even use of the classes encouraged under federal courts' levels-of-scrutiny doctrine would be conducive to justice.

To determine what process is constitutionally due, Supreme Court generally has balanced three distinct factors consisting of, first, private interest that will be

affected by official action, second, risk of erroneous deprivation of such interest through procedures used, and probable value, if any, of additional or substitute procedural safeguards, and, third, government's interest. U.S.C.A. Const. Amends. 5, 14 Gilbert v. Homar, 117 S.Ct. 1807(U.S.Pa.,1997) The policy arguments in this matter are timely and ripe: The baby boom has ended and the recent mortgage crisis and what may be long term levelling of formerly boom economy cycles, signal a long lasting end to the wonder years of land development. This is a time ripe for causing a windfall effect of this trend - a heightening of citizen input on local projects, especially where the present policy of stifling appeals by community groups and citizens might unfortunately be used to further developer's interests, in times of falling business, to the detriment of comfort, environment, safety, and also property values and pecuniary interests as well. The benefit of economy and preventing of crowded dockets is easily attainable through alternate means, and means that would place post-baby boom developers on a level less immune to the careful scrutiny intended by the Constitutions and most municipal and Township codes. At any rate, a Pennsylvania phenomenon of continual lessening of government adherence to the full spectrum of liberty and property rights under the state and federal constitutions cries out for the Court's review.

The Commonwealth has an obvious interest in making law uniform, and there is little state interest in keeping zoning litigation to a minimum if it must result from deprivals of readily available constitutional rights. Moreso, the present milieu is demoralizing to citizens because it carries with it the appearance of bias or partiality towards developers and others who benefit from reduction of the numbers of aggrieved citizens with standing to sue. This is an aspect most intensely felt at the municipal level, which is exactly where the appearance of partiality is least wanted and so often felt.

Appellant therefore requests grant of writ of certiorari, and a finding that Pennsylvania law regarding standing to properly oppose land development and zoning variances is overly restrictive, arbitrary, and causes unequal treatment, and is thus unconstitutional.

**II. Has the Supreme Court of Pennsylvania, and has the Commonwealth Court of Pennsylvania, violated due process requirements of justice, full and fair review, and access to Courts, and numerous specific decisions of the Court, the highest Pennsylvania courts and the circuit courts, in a volume that warrants reversal or other exercise of the Court's authority ?**

Request for Reversal of Zoning Board Case Decision

The appeals, of course, were decided in an abuse of discretion as well as the unconstitutional narrowing discussed above. Appellant also claimed support for standing because a) the appellee municipality severely abused discretion, and the error deserved correcting, b) the presence of pecuniary damage to appellant including lowering of property values, where he holds title to property in the next township, c) appellant's specific circumstances , as historic architecture hobbyist and follower of planning trends in what is a very unique setting, and d) foremost, appellant's reliance on foot and bicycle travel as his means of travel.

A severe error fatal to the decision is that Norcini Builders Inc. was granted intervenor status over objections, and it was in fact their petition to quash that was acted upon, this despite their lack of standing, as intervenor, to challenge the propriety of the action under Pennsylvania Law. Appellant sought standing for the additional reason that the community had been fraudulently swayed by two meetings sponsored by the intervenor in an overt showing of intent to create a community consensus where the community in fact was in part opposing and in part afraid to voice their true opinion. The Zoning Board and some officials, since

dismissed, lent their credence to this tactic. Petitioner was the citizen who stood forth to voice the truth of the matter and did so in the midst of fear and innuendo, forced even to raise intimidation to the police department.

Appellant claimed Township bad faith, partiality, and collusion. This then became compounded by the scandals involving the Department of Community Development, raised in the Pennsylvania Supreme Court appeal. These voluminous aspects remain enshrouded in a District Attorney's investigation to this day. Regardless, this aspect lent enormous support to appellant's quest for intervention and for the appellate court's reversal of denial of intervention. The record, without great analysis, clearly showed governing bodies barrelling ahead with land use decisions against the better interests of the citizenry, concurrent with prima facie proofs of embezzlement and misapplication of funds, and dismissals of numerous employees, most of them in the land and zoning office. Authority naturally exists for intervention as supported by misdeeds of government. Taxpayers will not be permitted to intervene as defendants in application for peremptory mandamus to compel payment on city contract *without allegation of special interest or of collusion on part of city authorities.* Vare v. Walton, 21 Pa.Dist. 77 (Pa.Com.Pl.,1911) (emphasis added) An applicant's

position as sole entity attempting to intervene under such circumstances lends additional support.

Appellant also objected that the standard of review that has been applied, namely, the standard applicable where the record was expanded in the trial Court, was in error, because the evidence was expressly ordered limited to the standing issue. Any de novo consideration of the merits of the appeal was error. The Commonwealth Court in acts, such as in listing sections of the Radnor Municipal Code pertinent to the underlying decision of the appellee Zoning Board, in footnotes 1 to 4 (Exhibit A), showed an addressing of certain merits of the underlying zoning decision, which was improper, and which intended prejudice in favor of the appellees.

Likewise the denial of appellant's motions for reconsideration were abuse of discretion. This is also true regarding denial of appellant's requests for *en banc* rehearing, alleging that large portions of fact and/or law were not apprehended in the decision. Middleton v. Middleton, 812 A.2d 1241, 2002 PA Super 371

Appellant also sought to bring to the attention of the appellate court, error in factual findings, such as that the buildings in question are not apartment houses as stated in footnote 1 of the Court's opinion, but rather, are spacious historic residences refitted for apartments, b) a finding that the appellee Zoning Board nor the

Board of Commissioners (Louella case) never formally notified the appellee developers of the approval of the landowners' applications', c) that expert testimony was not put forth for reason that it was unnecessary (Exhibit C footnote 17) or that the case never proceeded to trial stage, (Exhibit G page 7), and d) that new evidence presented in the trial Court in the Zoning Board case was limited to that pertaining to standing, so that the wrong standard of review, allowing de novo review, was utilized regarding any discussion of the merits.

Reversal was supported through numerous additional errors, even at the highest level. Appellant did not contest the action by the Prothonotary of the Supreme Court in refusing to file the motions for sanctions for false pleading, because said prothonotary had stepped up such activity in the prior 12 months and plaintiff intended to file an action attempting to resolve all of said acts.

Under the totality of appellant's claims of legal and factual support for aggrievment, and because appellant diligently participated, and because the Township constructively allowed appellant's participation by never formally notifying the landowner, who was promptly served with appellant's initial objections and second set of objections, the decisions of the Commonwealth and/or Supreme Court of Pennsylvania stand worthy of reversal and a permitting to proceed on the merits. This

would create a needed justice and fairness, and cause greater faith in government to all citizens and Pennsylvania citizens.

Request for Reversal of Louella Decision

In the Louella case, the Commonwealth Court and/or the Supreme Court of Pennsylvania, erred and abused discretion by not overturning the trial Court's denial of request to strike judgment entered for failure to pay the fee within ten days of denial of forma pauperis, where appellant proved that the amended application was received by the clerk during that time, pursuant also to the local practice, and proved other items including that the money order for the fee had been received and cashed by the clerk on the eighth ($8^{th}$) day after the denial of the amended forma pauperis application, which fell within the ten day period directed in Pa.R.C.P. 240 ?

Little argument will be needed by appellant to show a claim of abuse of discretion and obstruction to a valid land use appeal via the clerk's and Courts' procedural machinations, and affirming of such.

The affirming Court, of note, has decided here questions of substance and of deprival of Constitutional rights, in a novel fact situation of egregious

manipulation of the docket of a sort most prejudicial, and most worthy of the trial Judge's nullifying. The clerk lost track of the amended motion to proceed in forma pauperis, while at the same time striking the appeal because said motion had not been docketed, and losing track of the fee that was paid within the allowed time after the amended forma pauperis motion was denied, not docketing said fee to this day. The local practice clearly allows second and third forma pauperis applications, and appellant in fact relied on earlier successes within that framework, yet was inflicted with a premature striking of appeal and a denial of review of that deprival of access and due process.

It is abuse of discretion and partiality that the trial Court and appellees perceived that standing in this case was supported even more than in Schneller v. Zoning Board, because the appeal is not an appeal from a decision of the quasi-judicial zoning hearing board. The clerk inflicted the various obstructions on appellant and the trial judge did not discuss standing in the Opinion. The Pennsylvania courts have erred well beyond the threshold needed for vacating and remand.

As stated above, the Commonwealth Court has sua sponte addressed the issue of standing but this issue was not stated in the trial Court opinion, no hearing was held, and the defendants filed no arguments nor discovery regarding the claims of standing in the trial

Court, other than blanket denials and statements of lack of knowledge. Whether party has standing to maintain action is not a jurisdictional question, and thus court may not raise it sua sponte. City of Philadelphia v. Philadelphia Bd. of License and Inspection Review, 669 A.2d 460 (Pa.Cmwlth.App.,1995) Where factual issues are in dispute, their resolution must be based upon evidentiary record; otherwise effective appellate review would be eliminated. Allegheny v Venneri, 5 Pa.Cmwlth. 105, 289 A.2d 523 (1972)

Perhaps this is why they state in footnote 8 an additional sua sponte defense, that petitioner was not entitled to submit testimony regarding standing (see Nernberg supra), and, in footnote 9, that they are entitled to affirm on any basis so long as it appears of record. Feldman v. Lafayette Green Condo. Assoc., 806 A.2d 497, 502 fn.3 (Pa. Cmwlth.2002) But the standing issue remains non-jurisdictional, and unpreserved, and so the affirming decision is egregious error.[7]

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[7] Appellant's arguments regarding standing before the Commonwealth Court were presented only so that that Court, which had said arguments available to them, might be convinced that the appeal was virtuous in all respects. It was also important to show that the level of participation was sufficient and not substantially defended by the appellees.

Issues not preserved for appellate review cannot be considered by an appellate court even though the alleged error involves a basic or fundamental error. Dennis v. Southeastern Pennsylvania Transp. Authority, 833 A.2d 348, Cmwlth.2003. Appellee which itself took no appeal from holding of lower court could not raise issues not raised by appellant. Royal-Globe Ins. Companies v. Hauck Mfg. Co., 335 A.2d 460, 233 Pa.Super. 248 (Super.1975.) Berry v. Vantries, 12 Serg. & Rawle 89 (Pa.,1824) No cross appeal was filed by the respondents in either case.

Petitioner despite the above, and despite additional defenses, is deprived access to full and fair adjudication despite the validity of his claim. It is most likely that the trial Court and appellees perceived that standing in this case was supported even more, because the appeal is not an appeal from a Zoning Hearing body decision. This explains why the clerk inflicted the various obstructions on petitioner and the trial judge did not discuss standing in the Opinion. The Commonwealth Court avoided appellant's Optional question presented: " In Pennsylvania, are the Elements of Aggrievment on Appeal from a Decision of a Board of Township Commissioners held to a Less Stringent Standard than They Would on Appeal from a Decision of a Zoning Hearing Board ?"

Error and abuse of discretion also occur where the matters were decided without a hearing despite the

existence of issues of timeliness and standing which required testimony and proofs by both sides. Thus inflicted is a refusal of due process and remedy for injury that is repugnant to the Constitutions. The Commonwealth Court cites Nermberg v. Pittsburgh, 620 A.2d 692 (Pa.Cwlth. 1993) in support of their sua sponte defense that hearing is not available to claimants who did not participate in the municipality. The trial Court in concurrent case at 1757 CD 2008, held a substantial hearing. The fact bases of the two cases differ so that one hearing's serving dual roles would be an error of law. Moreso, Nermberg is a case where the appellant knew of the hearing and failed to appear, whereas in this case appellant showed that he acted within fifteen days of learning of the proposal, and argues throughout that he shouldn't be made to forego his opposition simply because he gained knowledge of the plan after other citizens, especially because he diligently compensated, and served immediately.

Thus the appellees definitively abused discretion and the severity of error supports standing because of a continuing violation.

As to the merits, they are on their face based on strong valid claims of spot zoning ( and invalidity of ordinance), traffic hazard, Harrisburg Fore Associates v. Board of Sup'rs of Lower Paxton Tp., 97 Dauph. 72 (1974), reversed 344 A.2d 277, 21 Pa.Cmwlth. 137, and

non-conformance with building line, City of Philadelphia v. Clare, 17 Phila. 59 (Pa.Com.Pl.,1885). The approved structure will jut egregiously into a long standing student right of way, will cause every business on the block, and the fire company, enormous hardship, because said jutting prevents large trucks, conflicts with coordination of the adjacent town square , and, even if granted a minimal review, could have finally fomented an inexpensive coordination of inexpensive means for aesthetic improvement of the intersection to resemble a town square instead of a "pedestrian bowling alley." Public confidence and perception of virtuosity in their elected commissioners suffers immeasurably.

But the merits and standing matters are overshadowed by the stark prevention and obstruction of the appeal by the trial Court, which the trial Court admits by making that issue the only issue worthy of deciding in the opinion.

Also in support of reversal, along with the numerous such support not stated herein, the Commonwealth Court egregiously finds that petitioner did not claim an intent to offer expert testimony and concludes that because lay testimony is insufficient petitioner's case was inadequate. (Exhibit G p.7 ) However, no motion to quash on the merits was adjudicated and the matter of testimony and by whom was clearly not even on the horizon unless the trial

Court a) opened the record for evidence and b) allowed the issue of merits of the appeal to be explored. Equally in error is the Commonwealth Court's quoting paragraphs from appellant's notice of appeal but in not finding for further statements made in other pleadings that better explained said paragraphs.

Appellant has been slighted by the state courts and this has occurred in substantial portion because of appellant's efforts to proceed in forma pauperis. This adds an overt appearance of bias and partiality, supportive of reversal. Appellant's proceeding pro se contributed to the fatal prejudice that has occurred. Appellant litigates the serious merits of this case, in part, on behalf of citizens within the community, who for reasons such as stated herein are not able to file or contribute to any proceeding. Merely being lay person and failing to consult attorney are insufficient circumstances in themselves to rob other affected landowners of opportunity to appeal grant of zoning variance. In re Leopardi, 496 A.2d 867, 90 Pa.Cmwlth. 616, Cmwlth.1985, appeal granted 509 A.2d 1262, 510 Pa. 502, reversed in part 532 A.2d 311, 516 Pa. 115. All of the within errors heap upon the residents of Radnor Township the visage of an overt bias and partiality, that is in this Commonwealth a reason for admonishment and vacating.

## VIII. CONCLUSION

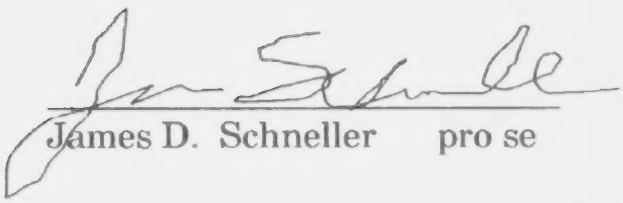
The Supreme Court of Pennsylvania is believed to have considered the cases on the merits. This is evidenced by the dockets, which include answers, and appellant's motions to reply, to stay proceedings, and for sanctions, all of these striving to heighten that court's knowledge of the issues, introduced from the start as policy-centered issues capable of repetition. Remand for findings and conclusions by the Pennsylvania Supreme Court may be warranted in this case.

Appellant, the petitioner, therefore requests, for the above reasons and all reasons of record, that writs of certiorari be issued to the Pennsylvania Commonwealth Court or the Pennsylvania Supreme Court.

Appellant respectfully requests, in the alternative, that the order(s) appealed from be reversed or reversed in part.

Appellant in the alternative respectfully requests that the case be remanded to the Pennsylvania Supreme Court with instructions for findings and conclusions, or

such action as is deemed by the Court to be just and appropriate.



James D. Schneller pro se

Date: November 8, 2010

## IX. TEXTS OF PERTINENT STATUTES

Purdon's Pennsylvania Consolidated Statutes
Title 53 P.S. Municipal and Quasi-Municipal Corporations
Part I. General Municipal Law
☐Chapter 30. Planning and Development
☐Article IX. Zoning Hearing Board and Other Administrative Proceedings (Refs & Annos)

➡§ 10909.1. Jurisdiction

(a) The zoning hearing board shall have exclusive jurisdiction to hear and render final adjudications in the following matters:
(1) Substantive challenges to the validity of any land use ordinance, except those brought before the governing body pursuant to sections 609.1 and 916.1(a)(2). [FN1]
(2) Challenges to the validity of a land use ordinance raising procedural questions or alleged defects in the process of enactment or adoption which challenges shall be raised by an appeal taken within 30 days after the effective date of said ordinance. Where the ordinance appealed from is the initial zoning ordinance of the municipality and a zoning hearing board has not been previously established, the appeal raising procedural questions shall be taken directly to court.
(3) Appeals from the determination of the zoning officer, including, but not limited to, the granting or denial of any permit, or failure to act on the application therefor, the issuance of any cease and desist order or the registration or refusal to register any nonconforming use, structure or lot.
(4) Appeals from a determination by a municipal engineer or the zoning officer with reference to the administration of any flood plain or flood hazard ordinance or such provisions within a land use ordinance.
(5) Applications for variances from the terms of the zoning ordinance and flood hazard ordinance or such provisions within a land use ordinance, pursuant to section 910.2. [FN2]

(6) Applications for special exceptions under the zoning ordinance or flood plain or flood hazard ordinance or such provisions within a land use ordinance, pursuant to section 912.1. [FN3]
(7) Appeals from the determination of any officer or agency charged with the administration of any transfers of development rights or performance density provisions of the zoning ordinance.
(8) Appeals from the zoning officer's determination under section 916.2. [FN4]
(9) Appeals from the determination of the zoning officer or municipal engineer in the administration of any land use ordinance or provision thereof with reference to sedimentation and erosion control and storm water management insofar as the same relate to development not involving Article V or VII [FN5] applications.
(b) The governing body or, except as to clauses (3), (4) and (5), the planning agency, if designated, shall have exclusive jurisdiction to hear and render final adjudications in the following matters:
(1) All applications for approvals of planned residential developments under Article VII pursuant to the provisions of section 702. [FN6]
(2) All applications pursuant to section 508 for approval of subdivisions or land developments under Article V. [FN7] Any provision in a subdivision and land development ordinance requiring that final action concerning subdivision and land development applications be taken by a planning agency rather than the governing body shall vest exclusive jurisdiction in the planning agency in lieu of the governing body for purposes of the provisions of this paragraph.
(3) Applications for conditional use under the express provisions of the zoning ordinance pursuant to section 603(c)(2). [FN8]
(4) Applications for curative amendment to a zoning ordinance pursuant to sections 609.1 and 916.1(a)(2).
(5) All petitions for amendments to land use ordinances, pursuant to the procedures set forth in section 609. [FN9]

Any action on such petitions shall be deemed legislative acts, provided that nothing contained in this clause shall be deemed to enlarge or diminish existing law with reference to appeals to court.
(6) Appeals from the determination of the zoning officer or the municipal engineer in the administration of any land use ordinance or provisions thereof with reference to sedimentation and erosion control and storm water management insofar as the same relate to application for land development under Articles V and VII. Where such determination relates only to development not involving an Article V or VII application, the appeal from such determination of the zoning officer or the municipal engineer shall be to the zoning hearing board pursuant to subsection (a)(9). Where the applicable land use ordinance vests jurisdiction for final administration of subdivision and land development applications in the planning agency, all appeals from determinations under this paragraph shall be to the planning agency and all appeals from the decision of the planning agency shall be to court.
(7) Applications for a special encroachment permit pursuant to section 405 [FN10] and applications for a permit pursuant to section 406. [FN11]

CREDIT(S)

1968, July 31, P.L. 805, No. 247, art. IX, § 909.1, added 1988, Dec. 21, P.L. 1329, No. 170, § 87, eff. in 60 days.

[FN1] 53 P.S. §§ 10609.1, 10916.1(a)(2).
[FN2] 53 P.S. § 10910.2.
[FN3] 53 P.S. § 10912.1.
[FN4] 53 P.S. § 10916.2.
[FN5] 53 P.S. § 10501 et seq.; 53 P.S. § 10701 et seq.
[FN6] 53 P.S. § 10702.
[FN7] 53 P.S. § 10508.
[FN8] 53 P.S. § 10603(c)(2).
[FN9] 53 P.S. § 10609.
[FN10] 53 P.S. § 10405.
[FN11] 53 P.S. § 10406.

Purdon's Pennsylvania Statutes
Title 53 P.S. Municipal and Quasi-Municipal Corporations
Part I. General Municipal Law
☐Chapter 30. Planning and Development
☐Article IX. Zoning Hearing Board and Other Administrative Proceedings (Refs & Annos)

§ 10913.3. Parties appellant before the board

Appeals under section 909.1(a)(1), (2), (3), (4), (7), (8) and (9) [FN1] may be filed with the board in writing by the landowner affected, any officer or agency of the municipality, or any person aggrieved.

Requests for a variance under section 910.2 [FN2] and for special exception under section 912.1 [FN3] may be filed with the board by any landowner or any tenant with the permission of such landowner.

CREDIT(S)

1968, July 31, P.L. 805, No. 247, art. IX, § 913.3, added 1988, Dec. 21, P.L. 1329, No. 170, § 93, effective in 60 days.

[FN1] 53 P.S. § 10909.1(a)(1), (2), (3), (4), (7), (8), (9).

[FN2] 53 P.S. § 10910.2.

[FN3] 53 P.S. § 10912.1.

# APPENDIX

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

JAMES D. SCHNELLER NO. 673 MAL 2009

v.

RADNOR TOWNSHIP
ZONING HEARING BOARD,
NORCINI BUILDERS INC.

A

ORDER

PER CURIAM

AND NOW, this 9th day of August, 2010, the Petition for Allowance of Appeal and "Petitioner's Application for Stay and Injunction" are denied. The requests for attorney's fees by Respondent Zoning Hearing Board of Radnor Township and Intervenor Norcini Builders, Inc., are denied.

COMMONWEALTH COURT OF PENNSYLVANIA

James D. Schneller, Appellant

No. 1757 C.D. 2008

v.

Zoning Hearing Board :
of Radnor Township
Norcini Builders Inc.

B

*PER CURIAM*

*ORDER*

NOW, August 7, 2009, having considered appellant's motion for reconsideration and appellee Norcini Builders' answer, the motion is denied.

Certified from the Record
AUG 07 2009
And Order Exit

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

James D. Schneller,
Appellant
v. : No.1757 C.D. 2008
Zoning Hearing Board
Radnor Township

C

Submitted: April 17, 2009

OPINION NOT REPORTED

MEMORANDUM OPINION
PER CURIAM FILED June 1, 2009

James D. Schneller appeals, pro se, the orders of the Court of Common Pleas of Delaware County (trial court) granting the petition to quash his land use appeal filed by Norcini Builders, Inc. (Norcini), denying his motion to strike Norcini's notice of intervention in the

appeal, and denying his motion to amend his appeal by joining another appeal from a decision of the Zoning Hearing Hoard of Radnor Township (Board). We affirm.

On July 18, 2007, Norcini filed an application seeking a determination by the Board that the private street Owens Lane in the Township constitutes a "street" under Section 280-4 of the Township of Radnor Zoning Ordinance (Ordinance). [1] [2] In the alternative, Norcini requested a variance from the definition

1

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[1] Section 280-4 defines "street", in pertinent part, as "[a] strip of land, including the entire right-of-way, intended primarily as a means of vehicular and pedestrian travel, which may also be used to provide space for sewers, public utilities, shade trees and sidewalks."

[2] Norcini was proposing to subdivide and develop a parcel in the Township's R-5 zoning district that is bounded on the east side by Bloomingdale Avenue and on the west side by Owens Lane. Norcini wanted to remove two apartment buildings, and replace them with five single (Continued...) ... family detached dwellings that comply with all of the setback, area, and coverage requirements of the Ordinance. Although access to all of the dwellings would be from a common drive on Bloomingdale Avenue, two of the dwellings would front on Bloomingdale Avenue and the other three would front on Owens Avenue.

of 'interior lot development" under Section 280-4 of the Ordinance [3], or a special. exception under Section 280-101(A)(1) as it was changing a nonconforming apartment use to a new use that was no more detrimental to the neighborhood. [4]

On August 30, 2007, the property was posted with notice of a public hearing to be conducted on the application before the Board on September 20, 2007. On September 6, 2007 and September 13, 2007, public notice [5] of the hearing was printed in the Suburban & Wayne Times. On September 7, 2007, notice of the hearing was sent to all owners of property located within 500 feet of parcel.

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[3] Section 280-4 defmes "interior lot development", in pertinent part, as "[i]n any property subdivided under the provisions of Chapter 255, Subdivision of Land, of the [Ordinance], the area of an interior lot shall not be less than two acres...."

[4] Section 280-101(A)(i) provides, in pertinent part, that "[a] nonconforming use may be changed to another nonconforming use by grant of special exception only upon determination by the [Board], after public hearing, that the proposed new use will be no more detrimental to its neighborhood and surroundings than is the use it is to replace."

[5] Section 280-4 defines "public notice", in pertinent part, as "[n]otice published once each week for two successive weeks in a newspaper of general circulation in the Township . . ."

On September 20, 2007, a public hearing on the application was conducted before the Board. See N.T. 9/20/07 [6] at 3-24. At the conclusion of the public hearing, the hearing was continued for the further reception of evidence to the third Thursday in October Id. at 21-24. Schneller did not appear or participate at the September 20, 2007 public hearing. See id.

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On October 1, 2007, the property was posted with notice of the continued public hearing before the Board on the application on October is, 2007. On October 4, 2007 and October 11, 2007, public notice of the continued public hearing was published in the Suburban & Wayne Times.

On October 18, 2007, the continued public hearing on the application was conducted before the Board. See N.T. 10/18/07 [7] at 4-70. Schneller did not appear or participate at the October 18,2007 public hearing; See id.

On November 26, 2007, the Board issued a decision comprised of findings of fact and conclusions of law that disposed of Norcini' s application. Ultimately, the Board determined that Owens Lane constitutes a "street" under Section 280-4 of the Ordinance.

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[6] "N.T. 9/20/07" refers to the transcript of the public hearing conducted before the Board on September 20, 2007.

[7] "N.T. 9/20/07" refers to the transcript of the public hearing conducted before the Board on September 20, 2007.

On December 26, 2007, Schneller filed a notice of appeal of the Board's decision in the trial court pursuant to Section 1002-A of the Pennsylvania Municipalities Planning Code (MPC). [8] On January 9, 2008, Norcini filed a notice of intervention in the appeal pursuant to Section 1004-A of the MPC.[9]

On January 23, 2008, Norcini filed a petition to quash Schneller's appeal. In the petition, Norcini alleged, inter alia that Schneller did not have

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[8] Act of July 31., 1968, F.L. 805, added by Act of December. 21, 1988, P.L. 1329, as amended, 53 F.S. § 11002-A. Section 1002-A provides that "[all appeals from all land use decisions . . shall be taken to the court of common pleas of the judicial district wherein the land is located and shall be filed within 30 days after entry of the decision..."

[9] Added by Act of December 21, 1988, P.L. 1329 as amended, 53 P.S. § 11004-A. Section 1004-A provides, in pertinent part, that "[w]ithin 30 days first following the filing of a land use appeal, if the appeal is from a board or agency of the municipality, the municipality and owner or tenant of property directly involved in the action appealed from may intervene as of course by filing a notice of intervention..."

standing to prosecute the appeal. On January 30, 2008, the Board filed a joinder with Norcini's petition to quash Schneller's appeal. On February 12, 2008, Schneller filed an answer to the petition to quash. On February 27, 2008, Schneller filed an answer to the Board's joinder in Norcini's petition to quash, and new matter.

On March 25, 2008, Schneller filed a petition for leave to amend his appeal to join another appeal from a Board decision. In the petition, Schneller alleged, inter alia that he had filed a validity challenge with the Board and asked the Township's solicitor "for alleviation of the filing fee for said challenge to validity, asking in the alternative for partial alleviation, and/or payment over time of the fee." See Petition to Leave to Amend Appeal at 2. After the solicitor had denied Schneller's request, Schneller sought leave of the trial court to join an appeal of the solicitor's decision with the then-pending appeal of the Board decision. See Id. at 3-4. On March 31, 2008, the Board filed a response to Schneller's petition for leave to amend his appeal. On April 23, 2008, Schneller filed a reply to the Board's response to his petition for leave to amend his appeal.

Hearings on the various motions were conducted before the trial court on August 1, 2008, and August 6, 2008. See NT. 8/1/08 [10] at 3-144; NT. 8/6/08 [11] at 3-94.

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[10] "N.T. 8/1/08" refers to the Transcript of the hearing conducted before the trial court on August 1, 2008.

At the conclusion of the August 6th hearing, the trial court issued the three orders underlying the instant appeal: (1) an order granting Norcini's petition to quash Schneller1s appeal; (2) an order denying Schneller's motion to strike Norcini's notice of intervention in the appeal; and (3) an order denying Schneller's

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motion to join in the appeal another appeal from a Board decision. N.T. 8/6/08 at 85-94. [12] Schneller filed the

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[11] "N.T. 8/6/08" refers to the transcript of the hearing conducted before the trial court on August 6, 2008.

[12] In the opinion filed in support of those orders, the trial court stated the following, pertinent part:

> The record in this matter established that [Schneller] neither appeared nor participated in any manner at the hearings before the [Board]. Furthermore, no evidence was offered that notice of the hearings, as required by the [MFC] or the [Ordinance] was lacking.
>
> Section 908(3) of the [MPC], 53 P.S. § 10908(3) provides, in pertinent part, that the parties to a hearing before the Board, are as follows:
>
> > . . . the municipality, any person affected by the application who has made timely appearance of record before the board, and any other person including civic or community organizations permitted to appear by the board.
>
> [Schneller] was not a party to the proceeding before the [Board] nor did he participate in the matter in any other fashion. Accordingly, he lacked standing to pursue the appeal which he filed in this Court from the Decision of

instant notice of appeal from those orders. [13]

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the Board. Orie v. Zoning Hearing Board of the Borough of Beaver, [767 A.2d 623 (Pa. Cmwlth. 2001)]; Leoni v. Whitpain Township Zoning Hearing Board, [709 A.2d 999 (Pa.Cmwlth.), petition for allowance of appeal denied], 557 Pa. 642,732 A.2d 1211(1998).

In addition, the record established that [Schneller] does not own any property in the immediate vicinity of the property which was the subject of the zoning proceeding from which he appealed. Instead, [Schneller] resides in a rental property located approximately one (1) mile from the subject property. While [Schneller] testified that be jogs and rides his bicycle in the area of the subject property, he was wholly unable to offer any other basis that would qualify him as a party aggrieved by the Board's action. Accordingly, in view of [Schneller]'s lack of participation before the [Board] and the utter absence of any legal interest on his part in the zoning proceedings, the Court granted [Norcini]'s Petition to Quash [Schneller]'s Appeal.

Trial Court Opinion at 3-4.

[13] Where, as here, the trial court has taken additional evidence, this Court's scope of (Continued....) review is limited to determining whether the trial court abused its discretion or committed an error of law. Metzger v. Zoning Hearing Board of Warrington Township, 481 A.2d 1234 (Pa. Cmwlth. 1984). In addition, the decision of whether or not to grant a petition to quash is a question of law and is, therefore, within our scope of

In this appeal, Schneller claims [14] that the trial court erred: (1) in granting Norcini's petition to quash his appeal; (2) in denying his motion to strike Norcini's notice of intervention in the appeal; and (3) in denying his motion to join in this appeal another appeal from a Board decision.

Schneller first claims that the trial court erred in granting Norcini' s petition to quash his appeal. As noted above, the trial court quashed the appeal on the basis that Schneller did not have standing to prosecute the appeal.

Section 908(3) of the MPC provides, in pertinent part, that the parties" to the proceedings before the Board are "[the municipality, any person affected by the application who has made timely appearance of record before the. board, and any other person including civic or community organizations permitted to appear by the board...." 53 P.S. § 10908(3). As found by the trial court, "[Schneller was not a party to the proceeding before the [Board] nor did he participate in the matter in any other fashion. . . . Trial Court Opinion at 3. Because Schneller was not a 4'party" in the proceedings before the Board, this Court need only address whether he is a "person aggrieved" by the Board's decision in

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review. Tierney v. Upper Makefield Township, 654 A.2d 621 (Pa. Cmwlth. 1995).

[14] In the interest of clarity, we consolidate and reorder the claims raised by Schneller in this appeal.

determining whether he possessed standing to prosecute the instant appeal in the trial court. Leoni; In re Rouse & Associates Ship Road Land Limited Partnership, 636 A.2d 231 (Pa. Cmwlth. 1993).

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In In re Rouse & Associates, this Court determined that certain objectors to a proposed subdivision plan who did not own any property that would be affected by the plan, but nevertheless sought to protect certain waterways for recreational purposes, lacked standing to appeal the township's approval of the preliminary subdivision plan. In that case, the trial court determined that the remaining nonresident objectors lacked standing to appeal the township's approval of the subdivision plan because they were not aggrieved parties.

In affirming the trial court on appeal, this Court stated:

After the withdrawal of the resident Objectors, the remaining Objectors do not own any property that will be affected by the subdivision plan, but merely assert that the waterways they seek to protect and utilize for recreational purposes will be adversely affected by the planned sewage treatment method. The remaining Objectors' interest in the decision is not sufficiently immediate, substantial or direct because they assert only an abstract potential injury to their recreational activities. As such, the remaining Objectors' interest in appealing the Supervisors' decision is simply too tenuous to confer standing upon them. In re Rouse & Associates, 636 A.2d at 235 (emphasis in original and

citations and footnote omitted). [15]
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[15] See also Spahn v. Zoning Board of Adjustment, 922 A24 24,31 (Pa. Cmwlth. 2007), petition for allowance of appeal granted, 598 Pa. 108, 954 A.2d 567 (2008) ('[A] party is traditionally 'aggrieved' when he has an adverse, direct, immediate and substantial interest in a decision, as opposed to a remote and speculative interest. A substantial interest 'is one that surpasses the common interest of all citizens in procuring obedience to the law' A direct interest 'requires a showing that the matter complained of has caused harm to a party's interest', and an immediate interest involves the nature of the causal connection between the action complained of and the injury to the party challenging it.' In the present case, the evidence of record reveals that Spahn lives approximately one and a half blocks away from the properties being developed by Woodstock but walks by the same on a daily basis. At the hearing before the Board, when questioned as to his objections, Spahn merely indicated that he was against this (Continued...) . . particular project because it undermines the ability of the City of Philadelphia to oversee orderly development of the City..." ... Upon questioning by counsel for Woodstock as to the bases for his objection, Spahn essentially indicated that he picks and chooses the cases he gets involved with carefully and that counsel had 'won the lottery' with the present case. Based upon this testimony and the evidence of record, it appears that Spahn was asserting no interest in this case other than the interest common to all citizens regarding obedience to the law. Thus, we cannot say that the trial court

In the case sub judice, the trial court determined that Schneller did not own any affected properties and that he did not have any interest that is directly threatened by the proposed development. More specifically, the trial court found:

[T]he record established that [Schneller] does not own any property in the immediate vicinity of the property which was the subject of the zoning proceeding from which he appealed. Instead, [Schneller] resides in a rental property located approximately one (1) mile from the subject property. While [Schneller] testified that he jogs and rides his bicycle in the area of the subject property, he was wholly unable to offer any other basis that would qualify him as a party aggrieved by the Board's action.

Trial Court Opinion at 3.

Therefore, we conclude that the trial court did not err in determining that Schneller had failed to establish the requisite standing to prosecute the instant appeal. See In re Rouse & Associates, 636 A.2d at 235 ("[O]bjectors' interest in the decision is not sufficiently immediate, substantial or direct because they assert only an abstract potential injury to their recreational

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erred as a matter of law in failing to conclude that Spahn had standing under the traditional notion of an "aggrieved' party.") (citations omitted).

activities. As such, the remaining Objectors' interest In appealing the Supervisors' decision is simply too tenuous to confer standing upon them.") (emphasis in original and citations. and footnote omitted). [16] [17] [18]
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[16] See also Leoni, 709 A.2d at 1002-1003 ("Our conclusion is supported by the fact that (Continued....) ... the Leonis cannot avoid the well established principle against raising issues for the first time on appeal; in the zoning context, issues not raised before a zoning board are not preserved for appeal absent due cause, such as a situation where the appellant had been prevented from raising those issues before the board. Here, of course, where no objectors appeared in the Board proceedings, no issues were presented before the Board in opposition to the zoning request, and there is no indication that the Leonis were somehow prevented from appearing or objecting. The Leonis had the opportunity to attend the hearing, object and be heard, but they gave up that opportunity. . . Moreover, apart from the Leonis' failure to preserve issues for review, and even if they had showed that their interests as landowners could have qualified them as 'persons aggrieved', there is still no affirmative support for the proposition, dubious on its face, that they should be heard on appeal after they did not participate in any way in the Board proceedings. We certainly have never held that private individuals, even ones who could be considered persons aggrieved' before a zoning board due to their interests as landowners, preserve issues for appeal, where there was no appearance or objection before the board. Instead, this Court has indicated that, regardless of whether an

Accordingly, the orders of the trial court are affirmed.

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individual is a 'person aggrieved', that person must nonetheless appear or at least raise some objection before the Board in order to have standing to advance an objection on appeal. . ." (citations omitted). .

[17] Even assuming that Schneller had standing as one who had an interest in property near the location of the proposed development, he did not offer any expert testimony at the hearing before the trial court as to the numerous potential adverse effects of the development. Lay testimony which is unsupported by objective expert evidence does not constitute a basis for denying a proposed development. See, e.g., In re Brickstone Realty Corp., 789 A.2d 333 (Pa. Cmwlth. 2001), petition for allowance of appeal denied, 569 Pa. 723, 806 A.2d 863 (2002) (expert evidence is usually needed to prove that abnormal and hazardous traffic effects would result from proposed development).

[18] Based upon our disposition of this claim, we will not consider the additional claims of error raised in this appeal.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

James B. Schneller, :
Appellant :
: No. 1484 C.D. 2008
v. :
:
Zoning Hearing Board of Radnor Township :

**PER CURIAM**

**ORDER**

AND NOW, this 1st day of June, 2009, the orders of the Court of Common Pleas of Delaware County, dated August 8, 2008 at No. 07-18257, are AFFIRMED.

Certified from the Record
JUN -1 2009
And Order Exit

IN THE COURT OF COMMON PLEAS OF
DELAWARE COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

JAMES B. SCHNELLER, NO. 07-18257
Appellant

D

v.

ZONING HEARING BOARD OF RADNOR TOWNSHIP
Appellee
and
NORCINI BUILDERS, INC.,
Intervenor

OPINION

ZETUSKY, S.J. FILED: 10-6-08

Appellant appeals from an unspecified Order of this Court entered on August 6, 2008.

The record in the instant matter establishes that Appellant filed an Appeal on December 26, 2007 from a Decision of the Zoning Hearing Board of Radnor

Township which had been issued on November 26, 2007. The Decision in question involved the Appeal of Norcini Builders, Inc. which sought, inter alia, to have the Zoning Hearing Board determine that Owens Lane, located in Radnor Township, constituted a "street" within the meaning of that term as defined in the Radnor Township Zoning Code. Norcini Builders, Inc. sought this determination by the Board in connection with its plan to subdivide a parcel of property located at 212 Bloomingdale Avenue, in Wayne, Radnor Township, for purposes of constructing five (5) single family residences. The subject property abuts Bloomingdale Avenue on its eastern side and Owens Lane on its western border

Public hearings were held an Norcini's Appeal, and the Zoning Hearing Board issued its Decision on November 26, 2007 in which the Board determined that Owens Lane " . . . at the present time and as same presently exists, constitutes a street under Zoning Code § 280-4, subject to all conditions and qualifications set forth above."

Following Appellant's Appeal from the Decision of the Zoning Hearing Board, Norcini Builders, Inc. filed a Notice of Intervention. Thereafter, on January 28, 2008, Intervenor Norcini filed a Petition to Quash Appellant's Appeal. On January 30, 2008, Appellee Zoning Hearing Board of Radnor Township joined in Intervenor's Petition to Quash Appeal.

Appellant subsequently filed a Petition for Leave to Amend his Appeal and a Motion to Strike Intervenor

Norcini's Notice of Intervention. Hearings on Intervenor's Petition to Quash Appeal, Appellant's Petition for Leave to Amend Appeal and Appellant's Motion to Strike Notice of Intervention were held on July 1, 2008, and August 6, 2008, after an original hearing scheduled for July 18, 2008 was continued at Appellant's request. At the conclusion of the hearing on August 6, 2008, the Court entered three (3) Orders. The first Order denied Intervenor's Notice of Intervention. The second Order denied Appellant's Petition to Amend his Appeal. The third Order granted Intervenor's Petition to Quash Appellant's Appeal on the grounds that he lacked standing to Appeal and had failed to establish that he was an aggrieved party so as to pursue a land use appeal. Presumably, it is from the last of these three (3) Orders that Appellant now has filed a Notice of Appeal to the Commonwealth Court of Pennsylvania.

The record in this matter established that Appellant neither appeared nor in any manner at the hearings before the Zoning Hearing Board, no evidence was offered that notice of the hearings, as required by the Planning Code or the Zoning Ordinance, was lacking.

Section 908(3) of the Pennsylvania Municipalities Planning Code, 53 P.S. § 10908(3) provides, in pertinent part, that the parties to a hearing before the Board, are as follows:

. . . the municipality, any person affected by the application who has made timely appearance of record before the board, and any other person including civic or

community organizations permitted to appear by the board.

Appellant was not a party to the proceeding before the Zoning Hearing Board, nor did he participate in the matter in any other fashion. Accordingly, he lacked standing to pursue the appeal which he filed in this Court from the Decision of the Board. Orie v. Zoning Hearing Board of the Borough of Beaver _____Pa. Cmwlth. ____, 767 A.2d 623(2001); Leoni v. Whitpain Township Zoning Hearing Board, ____Pa. Cmwlth. _____709 A.2d 999(1998); appeal denied, 557 Pa. 642, 732 A.2d 1211(1998).

In addition, the record established that Appellant does not own any property in the immediate vicinity of the property which was the subject of the zoning proceeding from which he appealed. Instead, Appellant resides in a rental property located approximately one (1) mile from the subject property. While Appellant testified that he jogs and rides his bicycle in the area of the subject property, he was wholly unable to offer any other basis that would qualify him as a party' aggrieved by the Board's action Accordingly, in view of Appellant's lack of participation before the Zoning Hearing Board and the utter absence of any legal interest on his part in the zoning proceedings, the Court granted Intervenor's Petition to Quash Appellant's Appeal.

It is submitted that the Court's Decision to quash Appellant's Appeal for the aforesaid reasons is fully supported by the record and the applicable legal

authority and that there is no merit in Appellant's appeal from the Decision.

BY THE COURT:

_____/s/_____
EDWARD J. ZETUSKY JR., S.J.

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

JAMES D. SCHNELLER NO. 672 MAL 2009

v.

RADNOR TOWNSHIP
BOARD OF COMMISSIONERS,
LOUELLA HOLDING CO. LP.

E

ORDER

PER CURIAM

AND NOW, this 9th day of August, 2010, the Petition for Allowance of Appeal and "Petitioner's Application for Stay and Injunction" are denied. The requests for attorney's fees by Respondent Board of Commissioners of Radnor Township and Intervenor Louella Holding Company are denied.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

James D. Schneller,
Appellant
v. : No.1664 C.D. 2008
Board of Commissioners of
Radnor Township
Louella Holding Co. LP

F

*PER CURIAM*

*O R D E R*

NOW, August 7, 2009, having considered appellant's motion for reconsideration and appellee Louella Holding Company's answer, the motion is denied.

Appellee's answer and new matter is hereby dismissed as moot.

Certified from the Record
AUG 07 2009
And Order Exit

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

James D. Schneller,
Appellant
v. : No.1664 C.D. 2008
Board of Commissioners of
Radnor Township

Submitted: March 13, 2009

OPINION NOT REPORTED G

MEMORANDUM OPINION
PER CURIAM FILED: June 1, 2009

James D. Schneller appeals, pro se, the orders of the Court of Common Pleas of Delaware County (trial court) denying his motion to strike the order striking his land use appeal, granting the petition to quash his appeal filed by the Radnor Township Board of Commissioners (Board), granting the petition to intervene in the appeal filed by Louella Holding Company, LP (Louella), and granting Louella's petition

to quash the appeal. We affirm.

On November 26, 2007, at its public meeting, the Board adopted Resolution #2007-31 granting approval to a final land development plan submitted by Louella to develop a parcel of land in the Township.[1] On December 31, 2007, Schneller filed a notice of appeal of the Board's decision in the trial court.[2]

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Schneller also filed an application to proceed in forma pauperis in the trial court with the notice of appeal.

On February 4, 2008, the trial court issued an order denying Schneller's application to proceed in forma pauperis on the basis that the application contained

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[1] Section 508(5) of the Pennsylvania Municipalities Planning Code (MPC), Act of July 31, 1968, F.L. 805 as amended, 53 P.S. § 1.0508(5) provides that "[b]efore acting on any subdivision plat, the governing body . . . may hold a public hearing thereon after public notice."

[2] Section 1002-A of the MFC, added by Act of December 21, 1988, P.L. 1329, as amended, 53 P.S. § 11002-A, provides that "[a]ll appeals from all land use decisions . . shall be taken to the court of common pleas of the judicial district wherein the land is located and shall be (Continued...) filed within 30 days after entry of the decision. . . "

insufficient information for the determination of his ability to pay for the appeal. On February 15, 2008, Schneller filed an amended application to proceed in forma pauperis in the trial court. On February 25, 2008, the trial court issued an order which stated that, having been given notice on February 6, 2008, that his application had been denied and because payment of the filing fee had not been remitted, Schneller's appeal was stricken.

On March 4, 2008, Schneller filed the instant motion to strike the order striking his appeal. In the motion, Schneller alleged, inter alia that the order should be stricken because he had timely filed an amended application, "as is permitted by local practice, when the Order denying [in] forma pauperis states that insufficient information was alleged in the application...."

On March 5, 2008, Louella filed a motion to intervene in Schneller's appeal in the trial court. On March 24, 2008, Louella filed an answer to Schneller's motion to strike.

On March 28, 2008, the Board filed a petition to quash Schneller's appeal. In the petition, the Board alleged that Schneller did not have standing to pursue the appeal and that the appeal was untimely. On April 17, 2008, Schneller filed an answer to the Board's petition to quash. On April 18, 2008, Louella filed an

answer to, and a joinder in, the Board's petition to quash Schneller's appeal.

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On April 28, 2008, the trial court issued an order denying Schneller's amended application to proceed in forma pauperis on the basis that the application contained insufficient information for the determination of his ability to pay for the appeal. The foregoing order was entered on May 12, 2008.

On May 20, 2008, Schneller filed an answer to Louella's answer to, and a joinder in, the Board's petition to quash Schneller's appeal and new matter. On June 9, 2008, Louella filed an answer to Schneller's new matter.

Ultimately, on July 10, 2008, the trial court issued the four orders underlying the instant appeal: (1) an order denying Schneller's motion to strike the order striking his land use appeal; (2) an order granting the Board's petition to quash the appeal; (3) an order granting Louella's petition to intervene in the appeal; and (4) an order granting Louella's petition to quash the appeal. Schneller filed the instant notice of appeal from those orders.[3]

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[3] Where the trial court takes no additional evidence, our scope of review is limited to a determination of whether the Board committed an abuse of discretion or error of law. Cossell v. Connellsville Township Board of

In this appeal, Schneller claims[4] that the trial court erred: (1) in granting the Board's and Louella's petition to quash the appeal; (2) in granting Louella's petition to intervene in the appeal; and (3) in denying his motion to strike the order striking his land use appeal.

Schneller first claims that the trial court erred in granting the Board's and Louella's petition to quash the appeal As noted above, in the petition, the

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Board and Louella alleged that Schneller did not have standing to pursue the appeal and that the appeal was untimely.

In In re Rouse & Associates Ship Road Land Limited Partnership, 636 A.2d 231 (Pa. Cmwlth. 1993), this Court determined that certain objectors to a proposed subdivision plan who did not own any property that would be affected by the plan, but nevertheless

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Supervisors, 747 A.2d 977 (Pa. Cmwlth. 2000). Moreover, a trial court's decision to grant or deny a motion to quash an appeal is a question of law and is, therefore, within this Court's scope of review. Id. Tierney v. Upper Makefield Township, 654 A.2d 621 (Pa. Cmwlth. 1995).

[4] In the interest of clarity, we consolidate and reorder the claims raised by Schneller in this appeal.

sought to protect certain waterways for recreational purposes, lacked standing to appeal the township's approval of the preliminary subdivision plan. In that case, the trial court determined that the remaining nonresident objectors lacked standing to appeal the township's approval of the subdivision plan because they were not aggrieved parties.

In affirming the trial court on appeal, this Court stated:

After the withdrawal of the resident Objectors, the remaining Objectors do not own any property that will be affected by the subdivision plan, but merely assert that the waterways they seek to protect and utilize for recreational purposes will be adversely affected by the planned sewage treatment method. The remaining Objectors' interest in the decision is not sufficiently immediate, substantial or direct because they assert only an abstract potential injury to their recreational activities. As such, the remaining Objectors' interest in appealing the Supervisors' decision is simply too tenuous to confer standing upon them.

In re Rouse & Associates, 636 A.21 at 235 (emphasis in original and citations and footnote omitted).[5]

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[5] See also Spahn v. Zoning Board of Adjustment, 922 A.2d 24, 31 (Pa. Cmwlth. 2007), petition for allowance of appeal granted, 598 Pa 108, 954 A.2d 567 (2008)

("[A] party is traditionally 'aggrieved' when he has an adverse, direct, immediate and substantial interest in a decision, as opposed to a remote and speculative interest. A substantial interest 'is one that surpasses the common interest of all citizens in procuring obedience to the law.' A direct interest 'requires a showing that the matter complained of has caused harm to a party's interest', and an immediate interest 'involves the nature of the causal connection between the action complained of and the injury to the party challenging it.' In the present case, the evidence of record reveals that Spahn lives approximately one and a half blocks away from the properties being developed by Woodstock but walks by the same on a daily basis. At the hearing before the Board, when questioned as to his objections, Spahn merely indicated that he was 'against this particular project because it undermines the ability of the City of Philadelphia to oversee orderly development of the City....' Upon questioning by counsel for Woodstock as to the bases for his objection, Spahn essentially indicated that he picks and chooses the cases he gets involved with carefully and that counsel had 'won the lottery' with the present case. Based upon this testimony and the evidence of record, it appears that Spahn was asserting no interest in this case other than the interest common to all citizens regarding obedience to the law. Thus, we cannot say that the trial court erred as a matter of law

In the case sub judice, Schneller's notice of appeal filed in the trial court fails to allege that he owns any affected properties or that he has a financial interest that is directly threatened by the proposed development.[6] [7] In fact,

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in failing to conclude that Spahn had standing under the traditional notion of an aggrieved' party.")) (citations omitted).

[6] With respect to his purported standing, in the notice of appeal Schneller alleged the following:

9. Appellant is aggrieved by the Board's decision. Appellant has interests in the subject matter that would be adversely affected by the action sought to be challenged. Appellant has lived within one and one-half miles of the proposed site for 42 years, has utilized the retailers on the block including on the immediate lots, for the duration, and traverses the location at least 7 times a week. Appellant jogs and bicycles at the site in question frequently.

10. The Board's decision causes to appellant, and to classes within the community, a substantial negative effect on traffic, auto and pedestrian safety, noise, parking, the environment, the availability of shopping, pedestrian comfort, appearance of the block and intersections, historic nature of the block, business district, and town, perception of good faith governing,

and the morale of the citizenry.

11. Appellant's interests are pecuniary for reasons including that traffic and danger to travel affect appellant's schedule, budget, and quality of living. Appellant has a personal cultural interest in the historical and design aspect also. He has followed and supports the progress and recent success in that endeavor by the community.

Appellant is also aggrieved and economically deprived through an emerging policy of encroachment that has materialized in recent approvals by township authorities including the decision appealed herein, that are in derogation of the Radnor Township Comprehensive Plan, the Wayne Master Plan, and the pertinent chapters of the municipal code. These cause appellant or will soon cause appellant detriment to property values and quality of life, including negative effects on travel and walk, lessening of safety, reduced comfort, and greater risk of environmental harms.

Notice of Appeal at 2-3.

[7] As noted above, Section 508(5) of the MPC provides, in pertinent part, that "[b]efore acting on any subdivision plat, the governing body . . . may hold a public hearing thereon after public notice." 53 P.S. § 10508(5). In turn, Section 107 of the MPC defines "public hearing" as "[a] formal meeting held pursuant to public notice by the government body . . intended to inform and obtain public comment, prior to taking action in accordance with this

Schneller did not appear at the public meeting dealing with the proposed land development and, as a result, no evidence of standing was introduced before the Board.[8]

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act." 53 P.S. §10107. Finally, Section 107 defines "public notice" as [n]otice published once each week for two successive weeks in a newspaper of general circulation in the municipality. . ." Id. With respect to the purported lack of notice in this case, in the notice of appeal Schneller alleged that he [h]ad no notice, knowledge or reason to believe that such application had been made nor that interim approvals had been given. No notice of intended development, zoning variance, exception, or demolition, was posted at the proposed subdivision." Notice of Appeal at 2. In the absence of any allegation that the Board failed to provide the 'public notice" required by the MPC, Schneller's claim regarding lack of proper notice is likewise patently without merit.

[8] Although Schneller made a number of allegations underlying his standing in the notice of appeal, he failed to allege that the record before the Board was incomplete either because he was denied the opportunity to present evidence before the Board or because relevant evidence was excluded at the Board's public meeting. In the absence of a claim that a hearing was improperly held or that any evidence was improperly limited, Schneller was not entitled to present evidence of standing before the trial court. See, e.g., Nernberg v. City of Pittsburgh, 620 A.2d 662 (Pa. Cmwlth. 1993) (party not entitled to

Rather, Schneller filed the instant notice of appeal in the trial court after final approval was granted by the Board and claimed that the proposed development will result in numerous "substantial negative effects" See Notice of

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Appeal at 2-3. However, the potential harms alleged by Schneller in the notice of appeal are shared by the community at large See id.

Even assuming that Schneller had standing as one who had an interest in property near the location of the proposed development, he made no allegation that he could offer expert testimony as to the numerous potential adverse effects of the development. Lay testimony which is unsupported by objective expert evidence does not constitute a basis for denying a proposed development. See, e.g., In re Brickstone Realty Corp., 789 A.2d 333 (Pa. Cmwith. 2001), petition for allowance of anneal denied, 569 Pa. 723, 806 A.2d 863 (2002) (expert evidence is usually needed to prove that abnormal and hazardous traffic effects would result from proposed development).

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present evidence of standing before trial court where it failed to appear at local agency hearing).

Therefore, we conclude that the trial court did not err in determining that Schneller bad failed to establish the requisite standing to appeal from the Board's approval of Louella's final land development plan. See In re Rouse & Associates, 636 A.2d at 235 ("[O]bjectors' interest in the decision is not sufficiently immediate, substantial or direct because they assert only an abstract potential injury to their recreational activities. As such, the remaining Objectors'
interest in appealing the Supervisors' decision is simply too tenuous to confer standing upon them.") (emphasis in original and citations and footnote omitted)[9] [10]

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[9] In this case, the trial court granted the motion to quash primarily on the basis that it was untimely under the provisions of Section 1002-A of the MPC. However, as outlined above, it is clear that the motion to quash was also properly granted on the basis that Schneller lacked standing to prosecute the instant appeal. It is well settled that this Court may affirm the trial court's order on any basis appearing in the record. See Feldman v. Lafayette Green Condominium Association, 806 A.2d 497, 502 fn. 3 (Pa. Cmwlth. 2002) ("[We may affirm an order for any reason, regardless of the trial court's rationale, so long as the basis for our decision is clear on the record. *Pennsylvania State Police v. Paulshock*, 789 A.2d 309 (Pa. Cmwlth. 2001).").

[10] Based upon our disposition of this claim, we will not consider the additional claims of error raised in this appeal.

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Accordingly, the trial court's orders are affirmed.

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

James D. Schneller,
Appellant
v. : No. 1664 C.D. 2008
Board of Commissioners of
Radnor Township

PER CURIAM

ORDER

AND NOW, this 1st day of June, 2009, the orders of the Court of Common Pleas of Delaware County, dated July 10, 2008, at No.07-018540, are AFFIRMED.

IN THE COURT OF COMMON PLEAS
DELAWARE COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

JAMES .D SCHNELLER :

vs. NO. 07-18540

BOARD OF COMMISSIONERS
OF RADNOR TOWNSHIP :

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OPINION

Plaintiff James D. Schneller, appealed to the Commonwealth Court of Pennsylvania from an Order he identifies in his Notice of Appeal as having been entered on July 21, 2008.

On July 10, 2008 this court entered four Orders in this case. The Rule 236 Notice for each Order was sent on July 21, 2008. Plaintiff does not identify which of the four Orders he has appealed.

On December 31, 2007 plaintiff filed a land use appeal in the Court of Common Pleas of Delaware County from the decision of the Board of Commissioners of Radnor Township dated November 26, 2007 approving a land

development plan for certain property in the Wayne section of the township.

At the same time plaintiff filed his land use appeal he filed a Petition to Proceed in Forma Pauperis. This petition was denied and a Rule 236 Notice was sent to plaintiff on February 4, 2008 so advising. On February 25, 2008 the court not having received plaintiffs filing fee for his land use appeal, entered an Order striking the appeal. On March 4, 2008 plaintiff filed a Motion to Strike the Order Which Strikes the Appeal. On March 5, 2008 Louella Holding Company, L.P. filed a Petition to Intervene in the Land Use Appeal. As Louella is the equitable owner of the property in question, this court, on July 10 2008, entered an Order permitting the intervention.

Section 1002-A of the Municipalities Planning Code requires all appeals from land use decisions to be taken to the Court of Common Pleas and filed within thirty days after entry of the decision. Since the township's decision was dated November 26, 2007 and the appeal not filed until December 31, 2007, the appeal was untimely. For this reason, on July 10 2008, this court entered an Order denying plaintiff's Motion to Strike the Order which Struck the Appeal.

It should also be noted that Rule 240(c)(ii) of the Pennsylvania Code provides that "not sooner than ten days after notice of the denial of the petition pursuant to Rule 236, the prothonotary shall enter judgment on non pros in the action or strike the appeal if the fee remains unpaid. The action or appeal shall be reinstated only by

the court for good cause shown". Good cause for failing to pay the filing fee or provide in a timely fashion additional information has not been shown. This is an additional reason for denying plaintiffs motion.

On March 28, 2008 the Board of Commissioners of Radnor Township filed a Petition to Quash Appellants Land Use Appeal citing the untimeliness of the appeal. As shown above, the appeal was untimely and on July 10, 2008 this court entered an Order granting the township's motion.

Louella filed an Answer and Joinder In the Township's Petition to Quash. For the reasons already set forth, on July 10, 2008, this court entered an Order granting Louella's motion.

BY THE COURT:

_____/s/_____
JAMES F. PROUD J.

DATE: 10-14-08